IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 6-10-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1287 of 1997

Tamilnad Mercantile Bank Ltd.,
Tuticorin,
rep.by its Chairman ... Appellant

Vs.

1. The Deputy Commissioner of Labour
Tirunelveli

2. M.Veerakumaran ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.12830 of 1986 dated 2.7.1997 this Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in T.N.S.E Appeal No.14/84 dated 18.08.86, and quash the same.

For Appellant : Mr.Vijay Narayan
Senior Counsel
for Mr.R.Parthiban
For 1st Respondent : Mr.D.Srinivasan,
Addl. Govt. Pleader
For 2nd Respondent : Mr.K.Rajasekaran
Amicus Curiea : Mr.S.Vaidyanathan

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.12830 of 1986 dated 2.7.1997, dismissing the writ petition filed by the appellant herein.

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2. The brief facts necessary for disposal of the writ appeal are that on 16.3.1981 the second respondent herein was appointed as Deposit Canvasser for the Nagercoil Branch of the Appellant Bank. On 4.9.1981, the second respondent sent a representation to the appellant to post him as Clerk. On 25.9.1991 the second respondent was appointed as Apprentice Clerk, temporarily for five months and posted at Gulburgah branch, Karnataka State. On 1.10.1981, the second respondent reported at Gulburgah and joined duty as Apprentice Clerk. During the period of his temporary appointment as Apprentice Clerk, the Bank paid an allowance/stipend of Rs.300/- per month. It is the contention of the second respondent that his appointment was orally terminated with effect from 18.12.1981 and in spite of the request made for allowing the second respondent to continue in service, he was not allowed to work. A counsel notice was issued on 19.3.1984 for which a reply was given by the appellant on 27.3.1984 stating that the second respondent resigned from his post on 16.12.1981 and directed the second respondent to submit a written request to receive the security deposit, after deducting dues if any, on production of due receipt. The second respondent thereafter filed appeal under section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, which was numbered as TNSC Appeal No.14/1984. In the said appeal it was contended that he never submitted resignation letter and if really it was submitted the same would have been accepted and the appellant would have returned the security deposit of Rs.1,000/- and communication of the acceptance letter is also mandatory in terms of Clause 522(i) of Sastri award. According to the second respondent, he was orally terminated and the same is in contravention of section 2(oo) and 25F of the Industrial Disputes Act, 1947. Ultimately in the appeal the second respondent prayed for reinstatement in service with full backwages and continuity of service. It is also stated in the said appeal that the appellate authority may be pleased to allow the appeal with a request to condone the delay, if any.

3. The appellant Bank filed a reply statement before the authority under the Act, viz., the Deputy Commissioner of Labour by contending that there was no termination of service of the second respondent and the second respondent was only a temporary Apprentice worked for a period of 76 days and he voluntarily resigned from his apprenticeship on 16.12.1981, which was accepted with immediate effect as per the letter dated 30.12.1981 and immediately after the resignation the second respondent left the Bank on and from 16.12.1981 and thereafter the Bank did not hear anything from the second respondent. The second respondent having resigned, the provisions of section 41(1) of the Tamil Nadu Shops and Establishments Act, 1947, is not attracted and the appellant having not terminated the service of the second respondent, the appeal filed under section 41(2) of the Act is not maintainable. Even assuming that the appeal is maintainable, the same having not been filed within 30 days from the date of termination and filed after the lapse of 28 months, the same is barred by limitation. It is further contended that the second

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respondent having been appointed as Apprentice Clerk for a term in Gulburgah Branch in the State of Karnataka and while working there he resigned the post and the communication of his acceptance having taken place in Karnataka, which is outside the territorial jurisdiction of the State of Tamil Nadu, the appellate authority viz., the Deputy Commissioner of Labour, Tirunelveli, has no jurisdiction to entertain the appeal. The appellant further contended that even on merits there is no case made out by the second respondent as he has resigned on 16.12.1981 by submitting a letter of resignation in his own hand writing and handed over the keys. There was no employer-employee relationship as he was appointed only as Apprentice with effect from 25.9.1981 and joined Apprenticeship Training from 1.10.1981 and left the Bank by resigning on 16.12.1981. Thus he served as Apprentice for 2 1/2 months and therefore his appeal cannot be entertained in view of section 41(1) of the Act, which states that no employer shall dispense with services of a person employed continuously for a period of not less than six months. Insofar as the refund of security deposit was concerned, it is stated that the second respondent was always free to approach the Bank and get the security deposit refunded after giving due receipt and he never approached the Bank nor anything was heard from him till the suit notice was received.

4. The first respondent viz., the appellate authority considering the rival claims framed the following issues:

1. Whether the authority has jurisdiction to enquire into the appeal petition ?
2. Whether there is sufficient cause to condone the delay ?
3. Whether the appellant (Second respondent) is a 'person employed' as defined in the Act ?
4. Whether the appellant (second respondent) has resigned?
5. Whether the appellant has put in continuous service of six months ?
6. Whether the termination of the appellant is for a reasonable cause ?

5. The Deputy Commissioner of Labour/first respondent herein answered the first issue in favour of the second respondent, stating that the second respondent was originally employed at Nagercoil from 16.3.1981 and he was appointed as Apprentice Clerk at Gulburgah, by the Deputy General Manager, Tamilnad Mercantile Bank Ltd., Tuticorin; the second respondent and the appellant reside in Tamil Nadu and therefore substantial part of the subject matter has arisen within the jurisdiction of the first respondent appellate authority. Insofar as the second issue of delay of 28 months was concerned, the suit notice was taken as cause of action and reply having been issued by the appellant under Ex.P-13 and immediately thereafter the appeal having been filed the delay was properly explained, thereby it was condoned. With regard to the third issue as to whether the Apprentice is an employee and whether the second respondent resigned are concerned, the appellate authority held that the 'Apprentice'

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is covered under the Tamil Nadu Shops and Establishments Act, 1947, as an 'employee' and the resignation having not been accepted the said issues were also found in favour of the second respondent. With regard to the continuous employment for six months is concerned the appellate authority counted the period of service as Deposit Collector with the service as Apprentice Clerk and held that the second respondent has put in continuous service of not less than six months. Ultimately, it was held that one month notice or in lieu thereof one month pay having not been given to the second respondent, the termination of the second respondent was found not in order and the appeal filed by the second respondent was allowed.

6. The said order of the first respondent was challenged by the appellant in W.P.No.12830 of 1986 on the ground that the appeal filed before the first respondent was not maintainable as the second respondent was not an employee and only an apprentice/Trainee. Even the Daily Saving Deposit Canvasser cannot be treated as an employee as defined under section 2(12) of the Tamil Nadu Shops and Establishments Act, 1947, which defines 'person employed'. Even assuming that the deposit collection period is treated as employment period, the second respondent having accepted the post of Apprentice Clerk, which was given on 22.9.1981, and in which post he joined on 1.10.1981, there is cessation of that work and the first respondent has no territorial jurisdiction to entertain the appeal. As the situs of employment was at Gulburgah, the Deputy Commissioner of Labour at Tirunelveli has no jurisdiction to entertain the appeal and the Tamil Nadu Shops and Establishments Act, 1947, will not apply to the second respondent.

7. The learned single Judge upheld the order of the first respondent and dismissed the writ petition, as against which this writ appeal is filed.

8. The learned Senior Counsel appearing for the appellant Bank strenuously contended that the first respondent has no jurisdiction to entertain the appeal since the second respondent was appointed as Apprentice Clerk at Gulburgah, Karnataka State and the second respondent also was not having six months of service to attract section 41(1) of the Tamil Nadu Shops and Establishments Act, 1947, for filing appeal under section 41(2). The learned Senior Counsel submitted that there is an unreasonable delay on the part of the second respondent in filing the appeal and therefore the learned counsel prayed for allowing the writ appeal. The learned Senior Counsel also cited the decision of the Supreme Court reported in AIR 1967 SC 1040 (Workmen of Shri Ranga Vilas Motors (P) Ltd v. Sri Rangavilas Motors (P) Ltd and others) and the decisions of this Court reported in 2002 (2) LLN 306 (Management of Best & Crompton Engineering Ltd v. Presiding Officer, I Additional Labour Court, Chennai and Another); and 2003 3 LLN 296 (N. Ramathilagam v. Labour Officer (Conciliation), Kuralagam, Chennai and others), to support his contention that the first respondent has no jurisdiction to entertain the appeal as the entire cause of action arose at Gulburgah, which is within the

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territorial jurisdiction of Karnataka State. The learned Senior Counsel also submitted that the second respondent being an Apprentice, he cannot claim any benefit under the Act and his case will not attract Sections 2 (oo) and 25F of the Industrial Disputes Act, 1947, particularly when his appointment as Apprentice Clerk is for a period of five months. In support of the said contention, the learned Senior Counsel cited the decision reported in (2007) 1 SCC 214 (National Small Industries Corporation Ltd., v. V. Lakshminarayanan).

9. We heard the learned counsel appearing for the second respondent and also the Amicus Curiea appointed by this Court to assist the second respondent. The learned counsel appearing for the second respondent cited the decisions of the Division Bench of this Court reported in 1978 (1) LLN 456 = 1977 (52) F.J.R. 104 (Laxmi Vishnu Textile Mills Ltd, Bombay v. M.R.Balakrishnan) and 2001 (1) LLN 557 (S. Ramesh v. Tamil Nadu Petro Products Ltd.) to sustain the argument that the first respondent has got jurisdiction to entertain the appeal and pass orders.

10. We have considered the rival submissions made by the learned counsels on both sides.

11. The first and foremost point to be decided in this appeal is whether the first respondent has got territorial jurisdiction to entertain the appeal filed by the second respondent, who was allegedly terminated at Gulburgah, Karnataka State. The second point for determination is whether the second respondent was having six months continuous service as required under section 41(1) to entertain the appeal under section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947.

12. The following facts are not in dispute. The second respondent was appointed as Daily Service Deposit Canvasser in Nagercoil Branch from 16.3.1981 as per Ex.P-1. While he was doing deposit collection work, the second respondent submitted an application to the appellant Bank on 4.9.1981 for appointment as Clerk, which is marked as Ex.P-2. Pursuant to the said request the second respondent was appointed as an Apprentice Clerk at Gulburgah branch, temporarily for a period of five months on certain conditions by order dated 25.9.1981, which is marked as Ex.P-3 and the said order reads as follows:

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"TAMILNADU MERCANTILE BANK LTD.,
H.O., Tuticorin

Ref.No.A.O.111/81 Date: 25th Sept., 1981

Mr.A.Veerakumaran, B.A.,
S/o.Mr.A.Mahalingam Nadar,
Soorapallam, Saral P.O., Kanyakumari Dist.
Mr.A. Veerakumaran, B.A.,

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Sir,

You are appointed as apprentice clerk temporarily for five months. During the period you will be paid an allowance of Rs.300/- per month. If you have completed all the conditions of appointment within four months from the date of joining duty, you will be eligible for regular pay after 4 months. Any how it will not be extended beyond 5 months from the date of joining.

You please arrange to furnish cash security of Rs.500/- and personal security of Rs.2,000/- (Rupees Two Thousand only). You must report at our Gulbarga branch immediately.

Yours faithfully,
Sd/-
Deputy General Manager

Conditions of Appointment

1. The appointment is subject to medical fitness. Certificate of medical fitness may be obtained from the Doctor approved by the Gulbargah Branch Manager.

2. Age proof and qualification certificates should be produced while joining duty.

3. Before completion of 4 months period:

a) you should execute cash security bond for Rs.500/- and personal security bond for Rs.2000/-.

b) You should acquire typewriting knowledge to the extent of lower grade speed.

c) You should come out successfully in the test to be conducted on the completion of 2 months period. The examination will be based on your knowledge in various section works and book of instructions. If you have not come out successfully, two more chances will be given before the completion of 4 months period. Otherwise, your services will be terminated.

d) During the period of apprenticeship you are expected to introduce atleast a minimum of 100 Navarathna Mala Deposit accounts with the maturity value of not less than Rs.10,000/- Introduction of new accounts will be considered as an additional merit.

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Special grades will be given on the basis of new accounts introduced by you.

Sd/-
Deputy General Manager"

From the perusal of the above order of appointment dated 25.9.1981, we could see that the second respondent was appointed as Apprentice Clerk at Gulburgah Branch temporarily for five months on monthly allowance of Rs.300/- per month and if he complies the conditions of appointment, i.e., successfully passing the test to be conducted on completion of two months period or within the extended period of two more chances within four months period, he is eligible for regular pay after four months, which will not be extended beyond five months from the date of joining.

13. It is an admitted case that the second respondent accepted the conditions contained in the order of appointment and joined at Gulburgah branch by producing the certificate on medical evidence obtained from the Doctor approved by the Gulburgah Branch Manager. Second respondent was also directed to furnish cash security and personal security before the Branch Manager at Gulbargah and report before the Gulburgah branch and he reported before the Gulburgah branch and joined as Apprentice Clerk on 1.10.1981. The dispute is, while he was serving as Apprentice Clerk, whether he was not allowed to work from 17.12.1981 or whether he has resigned. The case of the management is that the second respondent resigned and the same was also accepted and a communication was given to that effect by the Branch Manager, Gulburgah on 30.12.1989.

14. While that being the facts, whether the first respondent, who is the Deputy Commissioner of Labour, Tirunelveli/Appellate Authority, constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, is vested with jurisdiction to deal with the appeal filed by the second respondent.

15. From the perusal of the Tamil Nadu Shops and Establishments Act, 1947, we could see that the said act extends to the whole of the state of Tamil Nadu and Inspectors are appointed under section 42 of the Act by the State Government by notification for the purposes of the Act within such local limits as the Government may assign to them. The powers and duties of the Inspectors are also prescribed under section 43 of the Act. The Deputy Commissioner of Labour in their respective areas are assigned with appellate jurisdiction by the Commissioner of Labour. Thus, the first respondent is given territorial jurisdiction to entertain the appeal filed by any person employed in any shop/establishment within his territory. Admittedly the second respondent's employment as Daily Collection Agent came to an end on 25.9.1981 when he was appointed as Apprentice Clerk temporarily for five months and posted at Gulburgah branch based on his application as per Ex.P-2. The second respondent being an employee of the appellant Bank at Gulburgah branch, the Deputy Commissioner of Labour at

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Tirunelveli region in Tamil Nadu has no jurisdiction to entertain the appeal filed by the second respondent, whose posting was at Gulburgah, letter of resignation was said to have been given at Gulburgah, acceptance of the same was communicated at Gulburgah and the alleged oral termination also happened at Gulburgah. Thus, the entire cause of action for filing the appeal by the second respondent arose only at Gulburgah and not within the territorial limits of the first respondent.

16. (a) The Supreme Court in the decision reported in AIR 1967 SC 1040 = (1967) 2 SCR 528 (Workmen of Shri Ranga Vilas Motors (P) Ltd v. Sri Rangavilas Motors (P) Ltd and others) considered similar jurisdictional issue and in paragraph 14 held as follows:

> "14. Therefore, the appeal must succeed unless the Company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points. Mr O.P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Kishanagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in Indian Cable Co. Ltd. v. Workmen held as follows:
> "The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act. 1946, Chagla, C.J. observed in Lalbhai Tricumlal Mills Ltd. v. Vin :
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> 'But what we are concerned with to decide is: where did the dispute substantially arise? Now, the Act does not

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deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a court or tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction.'

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference under Section 10 of the Act."

Applying the above principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government."

(b) This Court in the decision reported in 2002 (2) LLN 306 (Management of Best & Crompton Engineering Ltd v. Presiding Officer, I Additional Labour Court, Chennai and Another) followed the said judgment of the Supreme Court and held that what is relevant for sustaining a report before the Labour Court is the place where the cause of action arose substantially viz., the place where the employee was working at the time when the order of termination order was issued and not as to the place of initial appointment elsewhere, even though he was transferred to other places.

(c) The above said judgments of the Supreme Court as well as this Court were subsequently followed in the decision reported in 2003 3 LLN 296 (N. Ramathilagam v. Labour Officer (Conciliation), Kuralagam, Chennai and others).

(d) In the recent decision of the Supreme Court reported in (2007) 5 SCC 591 (Bikash Bhushan Ghosh v. Novartis India Ltd.), the cause of action in a dispute was considered. The Supreme Court held that termination order was served due to disobedience of the transfer order and the transfer order having been set aside, the appellants would be deemed to be continuing to be posted as Collectors and hence the State of West Bengal had jurisdiction to make the reference. The Supreme Court held that the State Government of the State where the part of cause of action arose would also have jurisdiction to make the reference under the Industrial Disputes Act, 1947.

17. (a) The decision cited by the learned counsel for the second respondent reported in 1978 (1) LLN 456 = 1977 (52) F.J.R. 104 (Laxmi Vishnu Textile Mills Ltd, Bombay v. M.R.Balakrishnan) has no application to the facts of this case as the termination of the service of the representative, who was employed in a Company has its Madras representative even though the head office of the Company was at Calcutta.

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In the said judgment, the Division Bench held that 'the argument that merely because the employer is a out of State establishment, the local enactments would not bind him is a far-reaching one and it would have a sinister effect of labour relations. If the contention is well founded, it would only mean that the employer can escape with impunity merely on the ground that his head office or his principal place of business is outside a particular State, which is governed by its own laws and which protects the interests of the labour and employees in ordinary commercial establishments, which are functioning within its local limits. We are unable to agree with the first contention.'

(b) The other decision of the Division Bench reported in 2001 (1) LLN 557 (S. Ramesh v. Tamil Nadu Petro Products Ltd.) is also distinguishable on facts. In the said case, the petitioner was appointed as an attender in the Tamil Nadu Petro Products Limited, Manali, Chennai, and he was promoted as Senior Attender and transferred to Kanpur branch from 7.1.1995. While he was working there, he was served with show cause notice, which was issued from the Madras Office. The allegation was that he has made false claim for Rs.1,855/-, which he claimed to have paid as school fees for his son who was a student in UKG 'A' section of DAV School at Madras. It was also found that after holding enquiry for the charge, order of termination was issued by the Chief Manager from the Madras office. Hence cause of action viz., issuance of the charge memo, passing the order of termination has happened at Madras and therefore the Division Bench held that the cause of action having taken place at Madras, the Conciliation Officer, Madras, has got jurisdiction to proceed with conciliation.

18. Here in this case, the territorial jurisdiction is given to the Inspectors as per the Tamil Nadu Shops and Establishments Act, 1947, as well as to the Deputy Commissioner of Labour in different regions under section 41(2) of the Act. The entire cause of action viz., place of posting, joining duty, last served, the alleged resignation and the alleged oral termination have all taken place at Gulburgah branch. Hence the entire cause of action and bundle of facts have taken place only at Gulburgah and nothing has taken place at Tirunelveli. Therefore the first respondent, who has no jurisdiction over the Gulburgah branch is not competent to entertain the appeal filed by the second respondent challenging the oral termination and seeking to set aside the oral termination with reinstatement with backwages and continuity of service.

19. In view of our finding that the first respondent has no jurisdiction to entertain the appeal on the ground of lack of jurisdiction, we are of the view that we need not go into the other issues raised in this writ appeal.

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20. The learned single Judge while dismissing the writ petition filed by the appellant, has not adverted to the issue of jurisdiction specifically raised before the first respondent as well as in the writ petition. Since we have come to the conclusion that the first respondent has no jurisdiction to entertain the appeal, we set aside the order passed by the first respondent as well as the order of the learned single Judge.

21. In the result, the writ appeal is allowed. There is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr

To

The Deputy Commissioner of Labour, Tirunelveli.

1 cc To Mr.R.Parthiban, Advocate, SR.62109.
1 cc To The Government Pleader, SR.62002.

W.A.No.1287 of 1997

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